

LOCAL GOVERNMENT (ADMINISTRATION) AMENDMENT REGULATIONS (No.2) 2020 – EXPLANATORY NOTES

These regulations will bring into effect **section 22** of the *Local Government Legislation Amendment Act 2019*.

In particular, the following will take effect: sections 5.39A, 5.39B & 5.39C.

Section in Amendment Act	Section in LG Act	Topic
Section 22	5.39A 5.39B 5.39C	Model standards for CEO recruitment, performance and termination. Adoption of Model Standards Policy for temporary employment or appointment of CEO.
Regulation	Amends	Explanation
Regulation 18A – Vacancy in position of CEO or senior employee to be advertised (Act s.5.36(4) and 5.37(3))	18A <i>Local Government (Administration) Regulations 1996</i>	Regulation 18A(1) is being amended to align with the new State-wide public notice provisions. If the position of CEO, or of a senior employee, becomes vacant the local government must give State-wide public notice of the position in accordance with the requirements of the Local Government Act (sections 5.36(4) and 5.37(3)). Regulation 18A(2)(da) provides that the State-wide public notice must include a website address where the job description form (JDF) for the position can be accessed.
Regulation 18C – Selection and appointment process for CEOs.	18C <i>Local Government (Administration) Regulations 1996</i> – Repealed	Regulation 18C is being repealed. The prescribed model standards for CEO recruitment and appointment outlined at Division 2 (Clauses 3-14) of the <i>Local Government (Administration) Amendment Regulations 2020</i> replace 18C. Local governments are required to determine the selection criteria for the position of CEO prior to a recruitment process being undertaken. The local government must approve by a resolution of an absolute majority of council, a job description form which sets out the duties and responsibilities of the position (5(2)(a)) and details the selection criteria (5(2)(b)).

		<p>A position vacancy must be advertised in accordance with 5.36(4) of the <i>Local Government Act</i> and 18A of the <i>Local Government (Administration) Regulations 1996</i>. A JDF form must also be made available on the local government's official website.</p> <p>As part of the process of selection, a panel must be established to conduct the recruitment and selection process. The selection panel must be made up of council members and at least one independent person who is not a current councillor or employee of the local government. The independent person should have experience in the recruitment and selection of CEO's and / or senior executives. It is the role of the selection panel to recommend one or more suitable applicants to the position of CEO based on the selection criteria outlined in the JDF.</p> <p>A final decision to make an offer of appointment to the position of CEO must be made by an absolute majority of council. The resolution must also approve the proposed terms of the contract.</p> <p>Appointment of the successful applicant to CEO must also be made by an absolute majority decision of council after negotiation of the final contract terms between the successful applicant and the local government and following the applicant's acceptance of the offer.</p>
Regulation 18D – Performance review of CEO, local government's duties as to	<i>Local Government (Administration) Regulations 1996 - 18D Repealed</i>	<p>Regulation 18D is being repealed. The prescribed model standards for performance review outlined at Division 3 of the of the <i>Local Government (Administration) Amendment Regulations 2020</i> (clauses 15-19) replace 18D.</p> <p>Local governments are required to review the performance of a CEO annually in accordance with section 5.38 of the Act. Division 3 sets out the process for performance review, including establishing the performance criteria upon which to base the review and the requirement to endorse the performance review by absolute majority on its completion.</p> <p>The CEO must be notified of the results of the performance review, including any issues identified in relation to the performance of the CEO, and how the local government proposes to address and manage those issues.</p>

Regulation FA – Prescribed model standards for CEO recruitment, performance and termination (Act s.5.39A(1)).	<i>Local Government (Administration) Regulations 1996</i> – 18FA is a new clause.	Regulation 18FA sets out the model standards for local governments in relation to the recruitment, performance review and termination of employment of a local government CEO.
Regulation 18FB – Certification of compliance with adopted standards for CEO recruitment (Act s.5.39B(7))	<i>Local Government (Administration) Regulations 1996</i> – 18FB is a new clause.	<p>Regulation 18FB requires local governments to certify that they have adopted the standards under section 5.39B of the Act. 18FB applies in relation to the recruitment and appointment of a local government CEO.</p> <p>A copy of the resolution to appoint the CEO in accordance with the adopted standards must be provided to the Department of Local Government, Sport and Cultural Industries within 14 days of the decision to appoint.</p>
Regulation 18FC – Certification of compliance with adopted standards for CEO termination (Act s.5.39B(7)).	<i>Local Government (Administration) Regulations 1996</i> – 18FC is a new clause	<p>Regulation FC requires a local government to certify that they have adopted the standards under section 5.39B of the Act. 18FC applies in relation to the termination of a CEO's employment contract.</p> <p>If a local government makes the decision to terminate the employment of the CEO, it must certify that the CEO's employment contract was terminated in accordance with the adopted standards for termination as outlined in regulations.</p>
<p>Division 2 – Standards for recruitment of CEOs</p> <p>Regulation 4 – Application of Division</p>	<i>Local Government (Administration) Regulations 1996</i> – Reg 4 replaces 18C.	<p>Regulation 18C of the <i>Local Government (Administration) Regulations 1996</i> is repealed. Instead, Regulation 4 applies in relation to Division 2 - the recruitment and selection process of a local government CEO.</p> <p>Division 2 does not apply in the event that the position of CEO is to be filled by a person in a prescribed class or in relation to the renewal of the CEO's contract, unless the CEO has been employed for a period of 10 or more consecutive years and a period of 10 or more years has elapsed since a selection and recruitment process was carried out</p>

		For the purposes of 5.36(5)(a), a person in a prescribed class includes a person who is and will continue to be employed by another local government and is contracted for a period of less than five years, or the person will be acting in the position of CEO for a period of less than one year.
Regulation 5 – Determination of selection criteria and approval of job description form.	<i>Local Government (Administration) Regulations 1996</i> – Reg 5 is a new clause.	<p>Regulation 5 deals with determining the selection criteria for the position of CEO. It is a requirement that the local government base the selection criteria on the necessary skills, knowledge, experience and qualifications necessary to effectively perform the role and responsibilities associated with the position.</p> <p>The local government must approve (by absolute majority) a job description form (JDF) that sets out the duties and responsibilities of the position and the selection criteria.</p>
Regulation 6 – Advertising Requirements	<i>Local Government (Administration) Regulations 1996</i> – Reg 6 is a new clause.	Regulation 6 deals with advertising the position of CEO where the position becomes vacant or the incumbent has held the position for 10 or more consecutive years. It is a requirement of the Local Government Act (s 5.36(4)) that upon the position of CEO becoming vacant, it must be advertised in a manner prescribed. Regulation 18A of the <i>Local Government (Administration) Regulations 1996</i> sets out the requirements for State-wide advertising.
Regulation 7 – Job description form to be made available by local government.	<i>Local Government (Administration) Regulations 1996</i> – Reg 7 is a new clause.	Regulation 7 requires a local government to provide a copy of the JDF to a person upon request. The local government must either provide the web address where the JDF can be downloaded or alternatively if the person is unable to access the website, email a copy, or send a hard copy in the post.
Regulation 8 – Establishment of selection panel for appointment of CEO.	<i>Local Government (Administration) Regulations 1996</i> – Reg 8 is a new clause.	Regulation 8 requires a local government to establish a selection panel to conduct the selection and recruitment process for appointment of a person to the position of CEO.

		<p>The selection panel must comprise of council members and at least one independent person who is not a councillor nor an employee of the local government.</p> <p>It is recommended that the independent person or persons have relevant experience in the recruitment and selection of CEO's and / or senior executives. It is the role of the selection panel to recommend one or more suitable applicants to the position of CEO based on the selection criteria outlined in the JDF.</p> <p>It is at the discretion of the local government to determine the number of people on the selection panel.</p>
Regulation 9 – Recommendation by selection panel.	<i>Local Government (Administration) Regulations 1996 – Reg 9 is a new clause.</i>	<p>It is the role of the selection panel to recommend a preferred applicant or applicants for appointment to the position of CEO. Regulation 9 requires the selection panel to make an assessment of each applicant's ability to perform the role of CEO based on their knowledge, experience, qualifications and skills as measured against the selection criteria outlined in the JDF.</p> <p>If the selection panel considers none of the applicants suitable for appointment to the position, they must advise the local government of that fact.</p> <p>If the selection panel considers none of the applicants suitable for appointment to the position of CEO, they may recommend changes be made to the duties and responsibilities of the position or the selection criteria.</p> <p>The selection panel must act in an impartial and transparent manner and in accordance with the principles set out in section 5.40 of the Act.</p> <p>The selection panel is responsible for ensuring that any applicant or applicants they recommend for appointment have demonstrated they meet the selection criteria and have had their qualifications verified. The selection panel must exercise due diligence in verifying referees, work history, skills and any other claims made by the applicant.</p>

Regulation 10 – New process to be commenced if no suitable applicants.	<i>Local Government (Administration) Regulations 1996 – Reg 10 is a new clause.</i>	<p>If the selection panel finds that none of the applicants are suitable to be appointed to the position of CEO, they must advise the local government in accordance with 9(2)(b).</p> <p>Regulation 10 requires the recruitment and selection process to be undertaken again if the selection panel advises the local government it considers none of the applicants to be suitable for appointment to the position of CEO.</p> <p>Unless the selection panel recommends changes be made to the duties and responsibilities of the position or the selection criteria, clause 5 does not apply. In this instance, the original JDF previously approved by the local government (under clause 5) is the JDF form for the purposes of the new recruitment and selection process.</p>
Regulation 11 – Offer of appointment to position of CEO.	<i>Local Government (Administration) Regulations 1996 – Reg 11 is a new clause.</i>	<p>Regulation 11 requires the decision to make an offer of employment to an applicant to the position of CEO to be made by an absolute majority of council.</p> <p>The council must approve making the offer of employment to the preferred applicant and the proposed terms of the contract to be entered into.</p>
Regulation 12 – Appointment to position of CEO	<i>Local Government (Administration) Regulations 1996 – Reg 12 is a new clause.</i>	<p>Regulation 12 deals with the appointment of the successful applicant to the position of CEO subsequent to the offer of appointment having been made, the final terms of the contract agreed to and the applicant accepting the offer of employment.</p> <p>The appointment of the successful applicant to the position of CEO by the local government must be made by an absolute majority of council. Council must endorse the appointment and approve the terms of the negotiated contract.</p>

<p>Regulation 13 – Recruitment to be undertaken on expiry of certain CEO contracts.</p>	<p><i>Local Government (Administration) Regulations 1996 – Reg 13 is a new clause.</i></p>	<p>Regulation 13 applies if a local government CEO has held the position for a period of 10 or more consecutive years upon expiry of the CEO's contract. Regulation 13 also applies if a period of 10 or more consecutive years has elapsed since a recruitment and selection process for the position has occurred and the incumbent CEO has notified the local government that they wish to have their contract of employment renewed upon its expiry.</p> <p>Subclause 13(2)(a)(ii) is drafted to allow for the possibility that a CEO who has, for example, held office for 10 years and has their contract renewed for another 5-year term following the recruitment and selection process. In that case, clause 13(2)(a)(ii) will operate to ensure that another 10 years can pass before another recruitment process is required. In the absence of clause 13(2)(a)(ii), when the renewed term came to an end, the CEO would have held the position for 15 consecutive years and clause 13(2)(a)(i) would operate to require a process to be undertaken.</p> <p>The local government must carry out the recruitment and selection process before expiry of the incumbent CEO's contract.</p> <p>The incumbent CEO may have their contract of employment renewed upon expiry if they are selected in accordance with the recruitment and selection process at subclause (3).</p>
<p>Regulation 14 – Confidentiality of information</p>	<p><i>Local Government (Administration) Regulations 1996 – Reg 14 is a new clause.</i></p>	<p>Regulation 14 requires confidentiality to be observed by the local government as part of the process of recruitment and selection. Information obtained as part of this process must only be used for, or in connection with, recruitment and selection.</p>
<p>Division 3 – Standards for review of performance of CEOs</p> <p>Regulation 15 sets out the standards to be observed by the local government in relation to the review of the performance of CEOs.</p>	<p><i>Local Government (Administration) Regulations 1996 – Reg 15 replaces regulation 18D which is repealed.</i></p>	<p>Regulation 18D is repealed. Division 3 effectively deals with the requirement to consider the performance review of the CEO in accordance with section 5.38 of the Act.</p>

Regulation 16 – Performance review process to be agreed between local government and CEO.	<i>Local Government (Administration) Regulations 1996</i> – Reg 16 is a new clause.	<p>Regulation 16 requires the local government and the CEO to agree on the process for performance review and any performance criteria that are additional to those specified in the contract. For example, the local government and the CEO may wish to include additional performance criteria after 1 or 2 years into a contract term as circumstances and priorities change.</p> <p>The process for performance review must be consistent with clauses 17 (Carrying out a performance review), 18 (Endorsement of the performance review) and 19 (CEO to be notified of the results of the performance review).</p> <p>The process for performance review and the selection criteria upon which the review will be based must be set out in a written document.</p>
Regulation 17 – Carrying out a performance review	<i>Local Government (Administration) Regulations 1996</i> – Reg 17 is a new clause	Regulation 17 deals with how a review of a CEO's performance must be carried out. A performance review must be carried out in an impartial and transparent manner. It must also be comprehensive, and evidence based. The CEO's performance must be measured against the performance criteria as specified in the CEO's contract and any other performance criteria as agreed and set out in the documented performance review process.
Regulation 18 – Endorsement of performance review by local government	<i>Local Government (Administration) Regulations 1996</i> – Reg 18 is a new clause	Regulation 18 requires that a performance review is endorsed by an absolute majority of council upon completion.
Regulation 19 – CEO to be notified of results of performance review	<i>Local Government (Administration) Regulations 1996</i> – Reg 19 is a new clause	Regulation 19(a) requires a local government to notify the CEO of the results of the performance review in writing. If the review identifies any performance issues, the local government must outline how it proposes to address and manage those issues.

		The local government must notify the CEO of the results of the performance review after it has been endorsed by an absolute majority of council.
Division 4 – Standards for termination of employment of CEOs. Regulation 20 – sets out the standards to be observed by the local government in relation to the termination of the employment of CEOs.	<i>Local Government (Administration) Regulations 1996</i> – Reg 20 is a new clause	Regulation 20 provides an overview of Division 4 – Standards for termination of employment of CEOs.
Regulation 21 – General principles applying to any termination.	<i>Local Government (Administration) Regulations 1996</i> – Reg 21 is a new clause	Regulation 21 outlines the general principles that must apply to any termination of a CEO's employment contract. Decisions relating to termination of employment must be made in an impartial and transparent manner. A CEO must be afforded procedural fairness in relation to the process for termination of employment. This includes: <ul style="list-style-type: none"> a) being informed of their rights, entitlements and responsibilities; b) notification of any allegations against the CEO; c) being given a reasonable opportunity to respond to the allegations; d) and genuinely considering any response provided by the CEO to the allegations.
Regulation 22 – Additional principles applying to termination for performance related reasons.	<i>Local Government (Administration) Regulations 1996</i> – Reg 22 is a new clause	Regulation 22(1) applies if the local government proposes to terminate the employment of a CEO based on the CEO's work-related performance. Subclauses 22(2)(a)-(d) and 22(3) require that a CEO's employment must not be terminated unless the local government has: <ul style="list-style-type: none"> • previously identified any issues with the CEO's performance as part of the performance review process; • informed the CEO of the performance issues;

		<ul style="list-style-type: none"> • given the CEO reasonable opportunity to address and implement a plan to remedy the performance issues; • determined that the CEO has not remedied the performance issues to the satisfaction of the local government; and • 22(3) reviewed the performance of the CEO within the preceding 12 months in accordance with 5.38(1) of the Local Government Act.
Regulation 23 – Decision to terminate.	<i>Local Government (Administration) Regulations 1996</i> – Reg 23 is a new clause	Regulation 23 requires that a decision to terminate the employment of a CEO must be made by an absolute majority of council.
Regulation 24 – Notice of termination of employment.	<i>Local Government (Administration) Regulations 1996</i> – Reg 24 is a new clause	Regulation 24 requires that a local government must provide notice in writing of the decision to terminate the employment of a CEO. Written notice must include the local government's reasons for termination.